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论新型贿赂

The new type of bribery

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摘要

随着市场经济和国际局势的发展变化，贿赂案件呈现出一些新特征，贿赂手段不断翻新，贿赂方式更具隐蔽性、复杂性。我国最高人民法院、最高人民检察院《关于办理受贿刑事案件适用法律若干问题的意见》明确规定了各种新型受贿刑事案件法律适用问题，解决了近年来司法实践中办理受贿案件经常遇到、存在歧义的问题。但《意见》中的许多细节规定引起了广泛的讨论。本文通过比较《意见》和《联合国反腐败公约》及其他国家反腐败法规，分析新规的进步和不足，力图概括新型贿赂犯罪的特征，并详细讨论交易型受贿、收受干股型受贿、委托理财型犯罪和特定关系人“挂名”领薪型受贿这四种受贿犯罪认定上的疑难问题。最后，本文总结了受贿犯罪的其他新形态，认为性贿赂入罪应当谨慎，受贿犯罪要如实贯彻好宽严相济的刑事政策。

关键词:受贿罪；《联合国反腐败公约》；贿赂手段

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Abstract

With the development of market economy and the international situation, the bribery crime has presented many new characteristics. The new means of the bribery crime appeared unceasingly and have been more concealed and complex. The Opinions on Issues concerning the Application of Law in the Handling of Criminal Cases Involving the Acceptance of Bribes jointly issued by the Supreme People's Court and the Supreme People's Procuratorate, defines application of law in the handing of new criminal cases involving the acceptance of bribes. However, many of details have aroused abroad controversy. This paper analyses the progress and insufficiency of the new rules by comparing the new rules and the United Nations convention against corruption and the anti-corruption laws and regulations in other countries, trying hard to summarize the new characteristics of the bribery crime. The paper also covered the details on the new types of bribery crime such as: accepting bribery through obtaining margins during commercial transaction, accepting bribery through receiving the corporate shares without payment of consideration, accepting bribery in the name of trust investment, accepting bribery through the special related person getting the salary only in name. Finally, the paper summarizes the other new forms of bribery crime, and considers that whether the sex bribe should be taken into criminal or not need to be treated with caution. The criminal policy of combining punishment with leniency should be faithfully carried out in bribery crime.

Key words: bribery crime; the United Nations Convention against Corruption; the means of bribery

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目 录

前言	1
第一章 新型受贿犯罪概述	2
第一节 新时期受贿犯罪呈现的新特征	2
一、受贿犯罪大要案增多，犯罪黑数增高	2
二、受贿犯罪手段不断翻新，贿赂内容多样化	3
三、窝案串案多发，受贿呈现“团伙化”	4
四、“灰色收入”成为潜规则，受贿变得“阳光化”	4
第二节 我国受贿犯罪立法现状以及国外立法例	5
一、我国受贿犯罪的立法现状及其评析	5
二、国外关于受贿犯罪的立法例及其借鉴	6
第二章 几种新型受贿犯罪的疑点探讨	10
第一节 交易型受贿	10
一、交易型受贿的概念	10
二、“优惠价格”与“市场价格”的认定	11
三、“其他交易形式”之定性	13
四、受贿人主观上是否以“明知”为必备条件	16
第二节 收受干股型受贿	17
一、干股概念与特征的认识	17
二、低价受让股份与交易型受贿犯罪	18
三、干股受贿数额的计算	19
第三节 委托理财型受贿	22
一、“明显高于出资应得收益”的具体认定	23
二、“亲自理财”型受贿的实践判断规则	24
第四节 特定关系人“挂名”领薪型受贿	26

一、“挂名”领薪型受贿与合法获酬行为的区分	26
二、“挂名”领薪型受贿问题争论的焦点	27
第三章 新型受贿犯罪认定的其他问题	31
第一节 受贿犯罪新形态	31
一、司法解释之外的受贿犯罪新形态	31
二、“性贿赂”入罪势在必行	32
第二节 处置新型受贿犯罪宽严相济的把握	33
结 论.....	34
参考文献	35

CONTENTS

Introduction.....	1
Chapter 1 The Summary of New Crime of Bribery	2
Subchapter 1 The Characteristics of New Crime of Bribery.....	2
Section 1 Major and Important Cases of Crime of Bribery Increase.....	2
Section 2 The tipe of Crime of Bribery is Ever-changing and The content of Bribery is diversified	3
Section 3 Woan Whuanan Is More Prominent and The Gang of The Crime of Bribery Appears.....	4
Section 4 The Gray Income Has Become The Unspoken Rules and The Crime of Bribery Became More Public	4
Subchapter 2 Legislative Situation of Chinese Bribery and Foreign Instance of Legislation of Bribery	5
Section 1 Legislative Situation of Chinese Bribery and analysist of The Legislative Situation	5
Section 2 Foreign Instance of Legislation of Bribery and drawing lessons from The Foreign Instance of Legislation	6
Chapter 2 Discussion on Several New Types of Crime of Bribery ..	10
Subchapter 1 Transactional Bribery.....	10
Section 1 The Characteristics of Transactional Bribery	10
Section 2 The Identification of The "Preferential Price" and "Market Price"	11
Section 3 The Identification of Other forms of Transactional Bribery.....	13
Section 4 the condition that whether he knows is essential for people who take bribes	16
Subchapter 2 Holding Shares of Bribery.....	17

Section 1	The Characteristics of Holding Shares	17
Section 2	Transferring Shares At Low Prices and Transactional Bribery	18
Section 3	Calculation of the Amount of Holding Shares.....	19
Subchapter 3	Delegation of Bribery	22
Section 1	The Identification of Significantly higher than the deserved gains	23
Section 2	Judge Rules of Personal Financial of Bribery	24
Subchapter 4	the special related titular to get money of Bribery.....	26
Section 1	The Identification of Getting paid Legally and The Identification of get money of Bribery	26
Section 2	The focus of debate of the special related titular to get money of Bribery	27
Chapter 3	Other Questions of New Crime of Bribery	31
Subchapter 1	New Forms of Crime of Bribery	31
Section 1	New Forms of Crime of Bribery Is In Addition to The Judicial Interpretation.....	31
Section 2	Sexual Bribery become law	32
Subchapter 2	the temper justice with mercy criminal policy of New Forms of Crime of Bribery	33
Conclusion	34
Bibliography	35

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